

FILED MAY 22, 2012

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>10-C-08517; 11-N-12532 (Cons.)</b>
	)	
<b>KERRINGTON FERNARDO OSBORNE</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 146539,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

This is a consolidation of two separate disciplinary actions filed against Respondent Kerrington Fernando Osborne (Respondent). The first action, Case No. 10-C-08517, arises out of Respondent's criminal conviction of violating Penal Code section 487, subdivision (a) (grand theft), a misdemeanor which involves moral turpitude. Upon finality of that conviction, the Review Department issued an order referring that matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed. This order also placed Respondent on interim suspension effective March 9, 2011, and ordered him to comply with rule 9.20 of the California Rules of Court. In the second proceeding, Case No. 11-N-12532, Respondent was charged with willfully disobeying or violating a court order (Bus. & Prof. Code, §6103) by failing to comply with the Review Department's order that he comply with rule 9.20 of the California Rules of Court.

Although Respondent was properly served in both of the above matters (and had actual knowledge of at least the rule 9.20 proceeding), he nonetheless failed to participate in either. As a result, his default was entered in both. The State Bar then filed petitions for disbarment under

rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup> Respondent has filed no motion seeking to have his defaults set aside.

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of hearing on conviction (NOH) or notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petitions and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 13, 1990, and has been a member at all times since then.

#### **Procedural Requirements Have Been Satisfied**

On February 17, 2011, the State Bar Court filed and properly served the NOH on Respondent by certified mail, return receipt requested, at his membership records address.<sup>3</sup> On June 9, 2011, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. Both the NOH and the NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

<sup>3</sup> The NOH was also served by regular mail at Respondent's membership records address.

recommendation. (Rules 5.41 & 5.345.) The return receipt for the NOH was returned bearing an illegible signature. The NDC, however, was returned to the State Bar.

In connection with the conviction referral matter, the State Bar: (1) sent Respondent a letter to Respondent's membership records address; (2) called directory assistance but there was no listing for Respondent; (3) called Respondent at a number found from an internet search and left a message on Respondent's answering machine; and (4) sent another letter to Respondent with courtesy copies of certain documents, including the NOH.

In connection with the California Rules of Court, rule 9.20 matter, Respondent had actual notice of the proceeding, as Respondent and the deputy trial counsel (DTC) assigned to this matter spoke by telephone. The DTC explained to Respondent the status of the disciplinary proceedings; advised him that an NDC was filed; and told him that she would be filing a motion for entry of default.

The court finds that Respondent was properly served with a copy of the NDC and NOH and that all due process requirements have been adequately satisfied. (See *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) Respondent, nevertheless, failed to file a response to the NOH or the NDC. On April 22 and July 12, 2011, in connection with the conviction and rule 9.20 matters, respectively, the State Bar filed and properly served a motion for entry of Respondent's default. The motions complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC in seeking to provide notice to Respondent. (Rule 5.80.) The motions again notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to either motion, and his defaults were entered in connection with the conviction and rule 9.20 matters on May 10 and July 28, 2011, respectively. The order entering Respondent's default in each matter was served on Respondent at his membership records address by certified

mail, return receipt requested.<sup>4</sup> In each matter, the court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of each order, and he has remained inactively enrolled since that time.

Respondent has not sought to have his defaults set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) The State Bar filed petitions for disbarment on December 16, 2011, and February 1, 2012, in the conviction and rule 9.20 matters, respectively. As required by rule 5.85(A), the State Bar reported in the petitions that: (1) it has had no contact with Respondent since either default was entered; (2) there are no other pending investigations or disciplinary matters; (3) Respondent has no prior record of discipline; and (3) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. Following consolidation of these matters, the case was submitted for decision on March 5, 2012.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding Respondent's conviction and in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, Respondent's conviction for grand theft and the factual allegations in the NDC support the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

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<sup>4</sup> The order entering Respondent's default in the conviction matter was also served on Respondent by first class mail, postage paid, to his membership records address.

**1. Case Number 10-C-08517 (Conviction Matter – Penal Code § 487, subd. (a))**

Respondent was convicted of violating Penal Code section 487, subdivision (a) (grand theft) for attempting to cash an altered \$1,710 check in his name.<sup>5</sup> Grand theft is a crime that necessarily involves moral turpitude. Conviction of a crime involving moral turpitude is cause for discipline. (Bus. & Prof. Code, § 6101, subd. (a).)

**2. Case Number 11-N-12532 (Rule 9.20 Matter)**

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Review Department order filed February 15, 2011, requiring compliance with California Rules of Court, rule 9.20.

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment must and should be recommended.

**RECOMMENDATION**

**Disbarment**

The court recommends that respondent Kerrington Fernando Osborne, State Bar number 146539, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

**Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

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<sup>5</sup> The original check was made payable to Anita Powers in the amount of \$117.80.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Kerrington Fernando Osborne, State Bar number 146539, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June \_\_\_\_\_, 2012

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DONALD F. MILES  
Judge of the State Bar Court